

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MEBRHATO TSEHAI,

Plaintiff,

No. CIV S-05-0759 DFL DAD P

vs.

TERESA A. SCHWARTZ, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding pro se with a complaint seeking relief under 42 U.S.C. § 1983. This proceeding has been referred to the undersigned magistrate judge pursuant to Local Rule 72-302 and 28 U.S.C. § 636(b)(1).

In accordance with the court's June 14, 2005 order, plaintiff filed a properly completed application to proceed in forma pauperis. Plaintiff's application filed June 24, 2005, makes the showing required by 28 U.S.C. § 1915(a). The application for leave to proceed in forma pauperis will therefore be granted.

Plaintiff is required by statute to pay the \$250.00 filing fee that was in effect when this action was commenced. See 28 U.S.C. §§ 1914(a) & 1915(b)(1). When plaintiff filed this action, he was without funds and had been without funds for six months. Accordingly, the court will not assess an initial partial filing fee. See 28 U.S.C. § 1915(b)(1).

1 Plaintiff will be obligated for monthly payments of twenty percent of the  
2 preceding month's income credited to his prison trust account. These payments must be  
3 collected and forwarded by the appropriate agency to the Clerk of the Court each time the  
4 amount in plaintiff's prison trust account exceeds \$10.00, until the filing fee is paid in full. See  
5 28 U.S.C. § 1915(b)(2).

6 The court is required to screen complaints brought by prisoners seeking relief  
7 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.  
8 § 1915A(a). The court must dismiss claims that are legally "frivolous or malicious," claims that  
9 fail to state a claim upon which relief may be granted, and claims that seek monetary relief from  
10 a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1) and (2).

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
13 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
17 Cir. 1989); Franklin, 745 F.2d at 1227.

18 A complaint, or a portion thereof, should be dismissed for failure to state a claim  
19 upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of  
20 facts in support of the claim or claims that would entitle him to relief. Hishon v. King &  
21 Spalding, 467 U.S. 69, 73 (1984); Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289,  
22 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court accepts as true the  
23 allegations of the complaint. See Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740  
24 (1976). The court also construes the pleading in the light most favorable to the plaintiff and  
25 resolves doubts in the plaintiff's favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).  
26 However, the court may disregard allegations in the complaint if they are contradicted by facts

1 established by exhibits attached to the complaint. Durning v. First Boston Corp., 815 F.2d 1265,  
2 1267 (9th Cir. 1987). The court need not accept as true conclusory allegations, unreasonable  
3 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,  
4 624 (9th Cir. 1981).

5 The Civil Rights Act under which this action was filed provides as follows:

6 Every person who, under color of [state law] . . . subjects, or causes  
7 to be subjected, any citizen of the United States . . . to the  
8 deprivation of any rights, privileges, or immunities secured by the  
Constitution . . . shall be liable to the party injured in an action at  
law, suit in equity, or other proper proceeding for redress.

9 42 U.S.C. § 1983. The statute requires that there be an actual connection between the actions of  
10 the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v.  
11 Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976).

12 “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
13 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or  
14 omits to perform an act which he is legally required to do that causes the deprivation of which  
15 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Supervisory  
16 personnel are generally not liable under § 1983 for the actions of their employees under a theory  
17 of respondeat superior and, therefore, when a named defendant holds a supervisory position, the  
18 causal link between supervisory personnel and the claimed constitutional violation must be  
19 specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld,  
20 589 F.2d 438, 441 (9th Cir. 1978).

21 In the present case, plaintiff has sued three prison officials employed at California  
22 Medical Facility: Teresa A. Schwartz, warden; Sterling G. O’Ran, associate warden; and R.  
23 Piazza, correctional counselor. Plaintiff’s statement of claim against these defendants is as  
24 follows:

25 I have a learning distabilitys [sic] and I am not geting [sic] the help  
26 that I need from CDC because I am should have been in a full time  
school at CDC but I am not. My GPA is below 4.0 and should

1 have been in a ABE 1 class so I can learn because I have being  
2 having this since I was a kid. The homework I was geting [sic]  
3 was to [sic] hard with out help at the time. My math and spelling  
4 reading is not that good ok.

4 Compl. at 3 of 23. Plaintiff seeks the following relief:

5 I would like the court to help me on my learning distabilitys [sic]  
6 and for CDC to follow the law under federal constitution and  
7 federal law. This is all facts and would like the court to look at this  
8 issises [sic] for Mr. Tsehai and is asking for \$4 million dollars  
9 from CDC. "Thank you."

8 Id.

9 Attached to plaintiff's complaint is an ADA request for reasonable modification  
10 or accommodation dated February 2, 2005. In this document, plaintiff states that he has a  
11 learning disability with a GPA of 2.0, that the CDC is aware of his learning disability, and that he  
12 does not know what modification or accommodation is requested but he needs help. After an  
13 interview conducted on February 15, 2005, V. Kahle noted on the ADA request form that  
14 plaintiff said he needed more assistance with his reading assignments and complained that he had  
15 been unassigned from the education program. Mr. Kahle found that plaintiff had a high absentee  
16 rate of unexcused absences from school and observed that plaintiff "removes himself from the  
17 help he says he needs." Mr. Kahle nevertheless partially granted plaintiff's request for  
18 modification or accommodation.

19 Plaintiff was dissatisfied with Mr. Kahle's conclusions and filed an inmate appeal  
20 dated February 27, 2005. In this document, plaintiff asserts that he was absent from school  
21 because an officer took his school card and states that he needed help with his homework and did  
22 not get enough help. Plaintiff requested assignment to full time school and placement in an ABE  
23 1 class. At the first level of appeal, defendant O'Ran advised plaintiff that he had not been  
24 dropped from school. Defendant O'Ran found that plaintiff's teacher had ducated him to come  
25 to class every Monday and that plaintiff had unexcused absences from two classes in October  
26 2004, two classes in November 2004, one class in December 2004, and six classes in January

1 2005. Plaintiff had received six CDC 128A counseling chronos and one CDC 115 disciplinary  
2 report for failure or refusal to report to his school assignment. Plaintiff's teacher provided  
3 defendant O'Ran with evidence that plaintiff's reading score was 3.2 rather than 2.0, as plaintiff  
4 had claimed. Defendant O'Ran determined that the teacher was aware of plaintiff's needs and  
5 was willing to help plaintiff if he would come to class. Defendant O'Ran partially granted  
6 plaintiff's inmate appeal.

7 Plaintiff was dissatisfied with defendant O'Ran's response and pursued his appeal  
8 to the second level. Warden Schwartz considered plaintiff's request for placement in full-time  
9 school and partially granted his appeal, stating that plaintiff may receive help with his education  
10 but must attend class. Defendant Schwartz concluded that, upon resolution of plaintiff's  
11 placement in administrative segregation, the institution "will attempt to assist the Appellant by  
12 educational assignment again."

13 Plaintiff subsequently filed an appeal seeking release from administrative  
14 segregation. This appeal reveals that plaintiff was placed in administrative segregation on an  
15 allegation of stalking defendant Piazza after she rejected one of plaintiff's inmate appeals without  
16 providing plaintiff with an explanation that satisfied him.

17 The court finds that the facts alleged by plaintiff are contradicted by the exhibits  
18 attached to his complaint. The exhibits do not support plaintiff's allegation that the CDC has  
19 refused to help him or his allegation that the defendants have failed to follow the law. Instead,  
20 the exhibits show that plaintiff failed to attend school regularly, failed to take advantage of help  
21 that was offered, and was not in a school program when he filed this action because he engaged  
22 in conduct that resulted in his placement in administrative segregation. The exhibits suggest that  
23 plaintiff would not attend school full time if he were placed in a full time program.

24 After careful consideration of plaintiff's entire complaint, including all of the  
25 exhibits, the undersigned finds that plaintiff has failed to state a federal claim upon which relief  
26 can be granted. Plaintiff has not demonstrated that he is entitled to injunctive relief or damages.

1 For these reasons, plaintiff's complaint should be dismissed. It is evident from plaintiff's own  
2 exhibits that he cannot cure the defects of his complaint.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff's June 24, 2005 application to proceed in forma pauperis is granted;

5 2. Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.

6 The fee shall be collected and paid in accordance with this court's order to the Director of the  
7 California Department of Corrections and Rehabilitation filed concurrently herewith; and

8 IT IS RECOMMENDED that this action be dismissed with prejudice for failure to  
9 state a claim upon which relief may be granted.

10 These findings and recommendations are submitted to the United States District  
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
12 days after being served with these findings and recommendations, plaintiff may file written  
13 objections with the court. A document containing objections should be titled "Objections to  
14 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
15 objections within the specified time may, under certain circumstances, waive the right to appeal  
16 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: May 30, 2006.

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21 DALE A. DROZD  
22 UNITED STATES MAGISTRATE JUDGE  
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